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such as old copper, &c., taken off or from said steamer Jewess, and also allowing him for the payment of one half of any just debts which may have been paid by him, and which had been incurred for and on account of the said steamer "Jewess" by Montgomery, previous to the conveyance to Whittington, on the 9th of January, 1854.

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*In the Circuit Court of Wisconsin,—May Term, 1854.*

MERRIHEW vs. THE MILWAUKEE AND MISSISSIPPI RAILROAD COMPANY.

1. The Board of Directors of a railroad company may make rules and regulations in relation to their business, but they must be reasonable, lawful, and within the limits of their charter. The establishment of certain trains for the exclusive transportation of passengers and their baggage, and other trains exclusively for the carrying of freight, is a reasonable regulation.
2. A person cannot, by merely paying his fare and procuring his ticket, as a passenger, compel a railroad company to carry him daily, together with his trunk or trunks, when such trunk or trunks contain merchandise, money and other valuable matter known as "express matter."

The charge of the court was delivered by

HUBBELL, J.—This action is brought to recover damages for the alleged wrongful acts of the defendants, the Milwaukee and Mississippi Railroad Company.

Railroads are of modern date, and novel questions are constantly arising between them and individuals, which require the consideration of courts and juries. This is the first time any of the questions involved in this case have been presented to this court. It will be my duty to give you the law relative to them, to the best of my ability.

The plaintiff complains of two wrongful acts. First, That he had a paper called a pass, signed by Jno. Catlin, President of the company, and that he had presented this pass to the conductor on the train and was refused a passage upon it.

Second. That he offered to go on board of the cars at Milwaukee for the purpose of being carried west on the road, and tendered the

usual ticket for his fare, and was not allowed to go. These facts sufficiently appear from the evidence and the admission of the parties.

The defendants contend that they were justified in these refusals, under the circumstances of the case.

And, 1st. The defendants alledge that the pass was revoked, or re-called by the company, and that the company rightfully refused to carry the plaintiff upon it.

On this point, I have to say to you that the instrument itself carries no evidence of a consideration paid. It is a mere license to pass, or a naked undertaking, without consideration expressed, to carry the plaintiff. It was good until it was revoked, and no longer. If, while the defendants were carrying the plaintiff under this pass, they had injured him, or his baggage, by carelessness, they would have been liable for any damage proved. And if the plaintiff, relying upon the expectation or belief that the pass would not be revoked, had placed himself in a situation where its revocation caused him an injury, it may be that, on proof of such special injury, damages might be recovered. But the revocation was within the power of the company, and was not, in itself, a wrongful act, but would only become so from the manner of doing it, which must be proved. Unless, therefore, you find by the evidence, that some consideration was paid for the pass, or that some passed or existed between the parties, you will find that the plaintiff cannot recover upon the ground of its revocation, since there is no proof of special damage. As to the right to revoke it—it appears that Mr. Brodhead was Superintendent of the company, and had authority to revoke it, and ordered it revoked before the passage was refused by the conductors. This might be regarded as sufficient authority for that purpose. But it appears that the conductors were officers and agents of the company, acting as such, and the defendants here have adopted and sanctioned their act. In the absence of proof that their act was unauthorized at the time, this is conclusive of the authority of the conductors.

Second. The defendants contend that they rightfully refused to carry the plaintiff, when he offered to go, on his ticket. It is ad-

mitted that the ticket was evidence of payment of the proper fare of a passenger. This point involves several important considerations.

The defendants were doing the business of common carriers of freight and passengers on the line of their road. As such, they were subject to the laws regulating common carriers. As a corporation they were not subject to greater liabilities, nor entitled to greater privileges, than private companies engaged in the same employment. As a corporate body they were entitled to do only those things which their charter authorized, and they could not lawfully do any thing prohibited by their charter. As common carriers they were bound to carry all freight and all passengers which were presented for transportation and paid for ; or to show some good cause or reason for not conveying them. But for their own convenience and safety, and for the convenience and safety of the public, they were entitled to establish rules and regulations for the management of their business. These rules and regulations have no limits, except that they must be reasonable, lawful and within the limits of the charter. And these regulations might be adopted by the Board of Directors, in the form of by-laws or resolutions, under their corporate seal, or by any officer or agent having charge of any particular branch of their business, in relation to the business committed to his charge. In this manner, the company or its officers might regulate the number of trains to be run daily, the time of departure, the rate of speed, the quantity and kind of loading for each car, the mode and time of receiving freight, giving receipts, issuing tickets, taking fare, &c., &c. And they might, in like manner, establish trains exclusively for passengers, and exclusively for freight, or mix and divide them as they saw fit. The public, all the while, might require a reasonable and proper regard for the safety and convenience of all those having business to do with the company. In the present case, the defendants allege that they had established a train for carrying passengers, with their baggage exclusively, and that they had also established a train or trains for the carrying of *freight*; and had presented reasonable accommodations to the public in both cases. If they furnished reasonable and proper

facilities to the public, for transporting freight and passengers, it was not a legal ground of complaint that they carried one or more passengers free of charge, as a compliment or favor. If, for instance, the passenger train contained sufficient and proper cars for those passengers who paid, the company had a right to run extra cars and to run them empty, or to load them as they saw fit. They might permit, if they so pleased, a shoemaker to occupy one, a tailor another and a grocery dealer another, and still the only question would be—is this allowed by the charter, and is there still reasonable and proper accommodation for all the passengers who have paid ?

The defendants might, in the same way, as a gratuity, or for pay, allow the United States mails to be carried in the passenger train ; or they might authorize the carrying of express matter in such train, by Holton & Eddy, or Flanders & Co., or any one else. The question would still be—have they provided reasonable and proper means for transporting freight and passengers generally ? Unless it is the legal right of all persons to have their freight conveyed by the *passenger train*, there is no ground of action because a particular individual is allowed to put his freight on that train ; no more than there would be on the part of passengers who *had paid* fare, because one or more had been suffered to pass without pay.

In the present case, if you find that the company contracted with Holton & Eddy to carry their express matter by the passenger train, and if you still find that the company had made reasonable and proper provision for carrying freight generally, the contract with Holton & Eddy was lawful and proper, and neither the plaintiff, nor any one else, had a right to interfere with this business.

Now, the defendants allege that they had made this contract, and that they excluded the freight of others from that train ; and that the plaintiff had been engaged interfering with this lawful business of theirs, and in attempts to get his freight on the passenger train, contrary to their established rules ; and they allege further, that, at the time he offered to go on the cars and presented his ticket, he was engaged in such business, or that they had good reason to believe he was.

If these several facts, or steps in the defence are proved, then the refusal by the conductor was proper. But the defendants have the burden of establishing these several facts to make out their case. It is proved that the plaintiff had paid his fare and presented himself, at the starting of the train, to go out as a passenger. They were bound to carry him, or show a good cause for refusing. If you find that the plaintiff was endeavoring to violate the reasonable and proper rules of the company and to interfere with their lawful business, and was going out for that purpose, or that the agents of the company had good reason to believe he was going out for that purpose, they were not bound to carry him, and he cannot maintain this action for the refusal. He should have disclaimed his purpose to go on the express business, or to interfere with the lawful business of the company.

The charter of this company has been granted by the legislature, for a double purpose; first to establish a railroad, and accommodate the public by the facilities it affords for the transportation of persons and property; Second, To induce and enable the company, by the profits of their business, to make a good road and conduct it efficiently and properly. The benefit is mutual and reciprocal. The company are bound reasonably to accommodate the public; and otherwise may do all acts authorized by their charter for their own benefit and in their own way.

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*New York Common Pleas,—January Term, 1857.*

JAMES M. LEWIS vs. JOHN A. GRAHAM AND OTHERS.

1. The distinction between a pledge and a mortgage. Where B had given G, the defendant, certain promissory notes and at the same time delivered to him sundry certificates of Illinois State indebtedness, and made an agreement that if the notes were unpaid at maturity, the defendants were authorized to dispose of and sell the same sixty days after the maturity of the notes and apply the proceeds to the credit of B, *held*, that this was a pledge and not a mortgage.
2. That on forfeiture for non-payment of the notes, the pledgees were required to demand payment and give notice of the intended sale, before sale of the securities could be made by them, so as to deprive the pledgor of his right to redeem.
3. That demand and notice would apply only to such securities pledged as were specially set forth in such demand, and that a sale of any pledges without notice would be invalid.